

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-275-C - ORDER NO. 2009-316

JUNE 10, 2009

IN RE: Application of Nexus Communications, Inc.)	ORDER GRANTING
for Certificate as an Eligible)	DESIGNATION AS AN
Telecommunications Carrier)	ELIGIBLE
)	TELECOMMUNICATIONS
)	CARRIER FOR LIFELINE
)	AND LINK-UP SUPPORT
)	FROM THE UNIVERSAL
)	SERVICE FUND

This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Application of Nexus Communications, Inc. (“Nexus” or the “Company”) for designation as an Eligible Telecommunications Carrier (“ETC”) throughout the BellSouth/AT&T service territories (“Designated Service Territory”) under the provisions of 47 U.S.C. § 214(e)(2) of the Federal Telecommunications Act (the “Federal Act”) and 47 C.F.R. §§ 54.401-54.417 (the “FCC’s Rules”). Nexus filed its Application on July 16, 2008, seeking ETC status in order to offer Lifeline and Link-Up support to its qualifying customers, and draw from the federal Universal Service Fund (“USF”) in connection with those services.

By letter, the Commission instructed Nexus to publish, one time, prepared Notices of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notices of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The

Company complied with this instruction and provided the Commission with proof of publication of the Notices of Filing. No petitions to intervene were received. The South Carolina Office of Regulatory Staff (“ORS”) was a party pursuant to statute.

The public hearing was held on March 24, 2009, in the Commission’s Hearing Room with the Honorable Elizabeth B. Fleming, Chairman, presiding. At the hearing Scott Elliott, Esquire, represented Nexus. C. Lessie Hammonds, Esquire, represented the ORS. Nexus presented the Direct Testimony of Steven Fenker. The ORS presented no testimony.

BACKGROUND

Nexus is an Ohio Corporation, operating as a foreign corporation in South Carolina, and was authorized to provide competitive resold local exchange telecommunications services in this State pursuant to Order No. 2004-421 (September 3, 2004) issued in Docket No. 2004-59-C. The Company provides local exchange and exchange access services in the Designated Service Area using a combination of resale and unbundled network elements, or unbundled network equivalents (“UNEs”) obtained through commercial agreements that allow end-to-end switching delivery of calls. Nexus offers all of the supported services using facilities obtained as UNEs, or the equivalents thereof, through commercial agreements. According to FCC Rules, facilities obtained as UNEs satisfy the requirement that an ETC provide the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.

The federal USF consists of four programs, each administered by the Universal Service Administrative Company (“USAC”): 1) financial support to carriers serving high-cost areas; 2) the E-rate program, which provides discounted services (local and long distance telephone service, Internet access, and internal connections to eligible schools and libraries); 3) assistance to low income customers (discounted installation and monthly telephone services); and 4) discounted services to rural health care providers. Nexus has made clear that it is not planning to seek high-cost universal service funding if it is designated as an ETC in South Carolina. Accordingly, Nexus limits its requested USF support to the federal USF low income support program and certifies that all low income USF funding it receives will be used to subsidize rates for its Lifeline and Link-Up customers, consistent with 47 C.F.R. § 54.403.

On December 8, 2008, Nexus and the ORS submitted a Stipulation setting out a number of terms under which Nexus agreed to operate should the Commission grant its ETC Application. The Stipulation between Nexus and the ORS is attached hereto as Exhibit A and incorporated herein by reference. As set out in the Stipulation, Nexus agrees to comply with 26 S.C. Code Ann. Regs. 103-690(C)(a)-(g).

ANALYSIS

A. Federal Statutory Requirements

In Section 214(e)(2) of the Federal Act, Congress authorized state commissions to designate a common carrier as an ETC if the carrier meets the requirements of Section 214(e)(1). Section 214(e)(1) provides:

(1) Eligible Telecommunications Carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received —

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

A telecommunications carrier may be designated as an ETC and receive universal service support so long as it offers, within a service area, the services that are supported by federal universal service support mechanisms under Section 254(c) of the Act, and so long as it adequately advertises the availability of, and the charges for, such services. The Commission notes that Nexus bears the burden of proving it has met each of the necessary elements required for ETC designation.

1. Service Area

Section 54.207 of the FCC's rules defines a "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). For service areas served by a non-rural incumbent local exchange company ("ILEC"), there are no restrictions on how a commission identifies a "service area" for purposes of designating a competitive ETC. Nexus has requested ETC designation in wire centers located throughout the

service area of BellSouth/AT&T-South Carolina, a non-rural carrier. No party opposes Nexus' service area designation. The Commission finds that Nexus has met the service area requirement.

2. Required Service Offerings

The services to be supported by the USF under Section 254(a) are principally enumerated in Section 54.101(a) of the FCC's Rules, 47 CFR 54.101(a), as follows:

- (a) Voice grade access to the public switched network;
- (b) Local usage;
- (c) Dual tone multi -frequency signaling or its functional equivalent;
- (d) Single-party service or its functional equivalent;
- (e) Access to emergency services;
- (f) Access to operator services;
- (g) Access to interexchange service;
- (h) Access to directory assistance; and
- (i) Toll limitation for qualifying low-income consumers.

As set out in its Application and Testimony, Nexus will offer all of the services enumerated above using facilities obtained from BellSouth/AT&T-South Carolina by means of a commercial agreement. Accordingly, Nexus satisfies the requirement set out in Section 214(e)(1)(B).

Additionally, FCC rules obligate an ETC to provide the low income support programs known as Lifeline and Link-Up and advertise the availability of those services in a manner reasonably designed to reach those likely to qualify for them. 47 C.F.R. §§

54.405 and 54.411. No party provided evidence or argument in opposition to Nexus' evidence regarding the foregoing supported services. The Commission finds that Nexus offers and has the capability to provide each of the nine supported services in the areas for which it seeks ETC status.

3. Required Advertising

In addition to the service offerings required by Section 214(e)(1)(B) of the Federal Act, FCC rules (CFR Parts 54.405 and 54.411) provide that an ETC must also publicize the availability of Lifeline and Link-Up services "in a manner reasonably designed to reach those likely to qualify for the service." Lifeline and Link-Up are the programs Nexus intends to support with ETC funding. Nexus provided testimony showing that it will advertise the availability and terms of its services throughout its designated area. Tr. at 18-19. No party challenged Nexus' testimony. The Commission concludes that Nexus has demonstrated that it will publicize the availability of Lifeline and Link-Up in a manner reasonably designed to reach those likely to qualify for the service, as directed by CFR §§ 54.405 and 54.411.

B. The FCC's ETC Order

On March 17, 2005, the FCC issued its ETC Order, to clarify existing requirements and impose additional federal requirements that the FCC will use in evaluating future federal applications for ETC designation. The FCC described its additional guidelines, codified at 47 CFR §54.202, as "the minimum requirements" it would use in designating a carrier as an ETC, and urged that state commissions apply these guidelines in their evaluation of ETC applications properly before such

commissions. However, the FCC did not obligate state commissions to employ the additional guidelines. ETC Order at paragraphs 58-64.

Generally, the additional FCC guidelines require that an ETC applicant demonstrate: (1) a commitment and ability to provide services, including service to all customers within its proposed service area; (2) that it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the ILEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Federal Act. Further, the FCC augmented its existing annual certification and reporting requirements to further the FCC's goal of ensuring that ETCs provide supported services throughout their service territories. Moreover, the FCC expanded its view of the public interest requirement for additional ETCs.

Although the additional requirements in the ETC Order are not binding on the Commission and appear to be oriented towards high cost fund applicants, we will consider them, as is appropriate, in this proceeding.¹

1. Specific Additional FCC Performance Requirements

First, pursuant to the ETC Order, an ETC applicant shall commit to providing service throughout its proposed designated service area to all customers making a reasonable request for service. 47 CFR §54.202(a)(1)(A).

¹ Subsequent to the Commission's hearing and vote on this matter, the South Carolina General Assembly approved ETC regulations, S.C. Code Ann. Regs. 103-690.1 (effective May 13, 2009), pertaining to the criteria for providing Lifeline and Link-Up support.

Nexus commits to providing service throughout its proposed ETC-designated service area to all customers. Tr. at 19. No party questions that commitment. Consequently, the Commission concludes that Nexus supplied sufficient evidence demonstrating its present ability to provide service throughout its proposed ETC-designated service area to all customers who make a reasonable request for service.

The FCC also expects an applicant to demonstrate its ability to furnish services to all customers in the foreseeable future. Thus, the FCC requires that a federal ETC applicant submit a five-year plan describing, with specificity, proposed improvements or upgrades to the applicant's network on a wire-center-by-wire-center basis throughout its proposed designated service area. However, because Nexus seeks ETC designation solely for reimbursement of subsidized Lifeline and Link-Up services to eligible customers and relies on the networks of its underlying carriers, the Commission agrees with Nexus and the ORS and finds that submission of a Five-Year Network Improvement Plan is not required at this time. However, should Nexus seek to receive high cost support, it shall abide by any multiyear network improvement plan requirements of the Commission.

Second, the ETC Order obliges an applicant to demonstrate its ability to remain functional in emergency situations. Nexus has provided testimony that it has the ability to do so. Because Nexus leases facilities from BellSouth/AT&T-South Carolina to serve its customers, it has the same ability to remain functional in emergency situations as this company. No party disagrees. The Commission finds that Nexus has met its burden on this issue.

Third, an ETC applicant shall demonstrate that it will satisfy applicable consumer

protection and service quality standards. 47 CFR §54.202(a)(3). Nexus provided evidence that it will satisfy applicable consumer protection and service quality standards. Tr. at 21. As part of its certification requirements for local exchange and interexchange services, Nexus must abide by the service quality and consumer protection rules set forth in the Commission's regulations and applicable orders. No party questions Nexus' evidence or commitments concerning the applicable standards. Consequently, the Commission concludes that Nexus has demonstrated that it will satisfy appropriate consumer protection and service quality standards. This finding is conditioned on Nexus' continuing compliance with the commitments it made in its certification docket and in this proceeding.

Fourth, an ETC applicant shall demonstrate that it offers a local usage plan comparable to the one offered by the ILEC in the service areas for which it seeks designation. The FCC has not adopted a specific local usage threshold. Nexus states that it includes specified quantities of usage in its rate plans and thereby complies with the requirement. Therefore, the Commission finds that Nexus' local usage and rate plans meet the comparable local usage and rate plan requirement.

Fifth, an ETC applicant shall certify its acknowledgement that the FCC may require it to provide equal access to long distance carriers if no other ETC is doing so within the service area. ETC Order at Paragraph 35; 47 CFR §54.202(a)(5). The Commission finds that Nexus meets the equal access requirement.

2. Specific additional FCC Certification and Reporting Requirements

In Paragraph 69 of its ETC Order, the FCC identified the following additional

annual reporting and certification requirements for ETCs (some of which simply require annual certification of existing ETC performance requirements):

a) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

b) detailed information on any outage lasting at least 30 minutes for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the Outage Reporting Order). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: 1) the date and time of onset of the outage; 2) a brief description of the outage and its resolution; 3) the particular services affected; 4) the geographic areas affected by the outage; 5) steps taken to prevent a similar situation in the future; and 6) the number of customers affected;

c) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to

provide service to those potential customers;

- d) the number of complaints per 1,000 handsets or lines;
- e) certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;
- f) certification that the ETC is able to function in emergency situations;
- g) the amount of USF funding received by Nexus during the reporting period;
- h) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and
- i) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

The FCC encouraged state commissions to adopt the foregoing reporting requirements and to apply them to all ETCs, not merely competitive ETCs. ETC Order, Paragraph 71. We will follow the FCC's recommendation with the exception of the progress reports on the five year plan, and we find that Nexus has committed to complying with all other applicable annual reporting requirements imposed on a recipient of low cost support. The Commission concludes that Nexus must file reports with the ORS as set out in the parties' Stipulation.

3. The Public Interest Requirement

Section 214(e)(2) of the Federal Act requires a finding that additional ETC designations be in the public interest. In the instant case, Nexus has demonstrated that its application for ETC designation is in the public interest, within the meaning of the ETC

Order. Nexus asserts that since low income support and Lifeline is designed to reduce the monthly cost of telecommunications services for eligible consumers, and is distributed on a per-customer basis, and is directly reflected in the price that the eligible customer pays, it is assured that all support received by the carrier is used to provide Lifeline services to consumers, thus promoting Lifeline and the availability of telephone service to low income users. No party contends that Nexus does not meet the public interest test.

In the Commission's view, the designation of Nexus as an ETC will increase customer choice for low income consumers eligible for Lifeline and Link-Up support in the areas requested. Customers who can obtain this telecommunications service will likely benefit from additional rate plan options and increased access to emergency services.

The Commission notes that Nexus' specific voluntary commitment to comply with the guidelines in the ETC order – and specifically with the ORS' tailoring of those guidelines to fit both the Commission's existing rules and Orders and the particular circumstances of Nexus' Application – is a critical component supporting a positive public interest finding. Thus, subject to the commitments and conditions discussed in this Order, the Commission concludes that Nexus has shown that its designation as an additional ETC is in the public interest for its proposed ETC designated area.

C. Other Considerations

With regard to annual recertification, we hold that the annual recertification required by the FCC and the Universal Service Administrative Company (USAC) is adequate and that the Company should not be required to apply for additional recertification to this Commission

on an annual basis. However, since Nexus seeks to be designated only in non-rural exchanges of BellSouth/AT&T-South Carolina, expansion to rural high cost areas would require additional designation proceedings before this Commission. Additionally, Nexus shall include in its quarterly Service Quality Report the number and justification of applications held for more than 30 days and the number and justification of applications that were denied. Nexus shall submit a two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying, and enrolling eligible participants in the Lifeline and Link-Up programs.

IT IS THEREFORE ORDERED THAT:

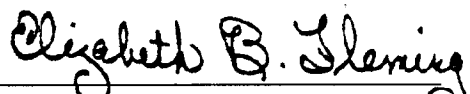
1. Nexus is designated as an ETC in the requested areas served by BellSouth/AT&T-South Carolina, as of the effective date of this order.
2. Nexus shall abide by its commitment to provide service throughout its ETC designated service area to all customers making a reasonable request for service, including low-income customers.
3. Nexus shall include in its quarterly Service Quality Report the number and justification of applications held for more than 30 days and the number and justification of applications that were denied.
4. Nexus shall submit a two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying, and enrolling eligible participants in the Lifeline and Link-Up programs.
5. All federal USF funding received as a result of this Order will be used for Lifeline and Link-Up support for low income customers.

6. Should the Commission determine that Nexus has not honored its commitments and plans as set forth before the Commission, or has failed to follow the applicable statutes, rules or regulations, the Commission may deny Nexus' annual recertification as an ETC.

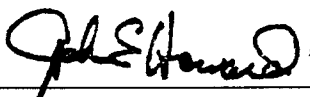
7. The Nexus-ORS Stipulation is approved.

8. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman
(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2008-275-C

IN RE:

Application of Nexus Communications, Incorporated for Certificate as an Eligible Telecommunications Carrier)))	STIPULATION
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This Stipulation is made by and between the South Carolina Office of Regulatory Staff ("ORS") and Nexus Communications, Inc., ("Nexus"), collectively referred to herein as the "Parties" or individually as a "Party."

This docket has been established by the South Carolina Public Service Commission (the "Commission"), on application of Nexus for designation as an Eligible Telecommunications Carrier ("ETC") in BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina's service area. Other than ORS and Nexus, there are no other parties of record to this proceeding.

ORS and Nexus agree to stipulate to the following:

- 1) On July 16, 2008 Nexus filed an application seeking ETC status to provide Lifeline and Link-Up services. Nexus is not seeking high cost support funding.
- 2) On July 24, 2008, the Commission issued a Notice of Filing and Hearing and established deadlines for intervention and the submission of prefiled testimony.
- 3) Nexus timely filed proof of publication as required by the Commission on August 20, 2008.
- 4) In support of its application, Nexus filed the direct pre-filed testimony of Mr. Steven Fenker on September 25, 2008.
- 5) ORS filed the direct testimony of Mr. James M. McDaniel on October 9, 2008, identifying those provisions of Commission Regulation 103.690 that had not been addressed by the

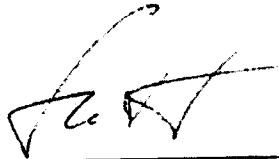
application or testimony of Nexus. Specifically, Nexus' application for ETC designation did not contain the following information which is required by 26 S.C. Code Regs. 103-690 C (a) (1):

- a) Commitment to provide service on a timely basis to requesting customers within the applicant's service area (103-690 C (a) (1) (A)(1));
 - b) A two-year plan describing the carrier's plans for advertising and outreach programs for identifying, qualifying and enrolling eligible participants in the Lifeline and Link Up program (103-690 C (a) (1) (C));
 - c) Demonstration that it will satisfy applicable consumer protection and service quality standards (103-690 C (a) (1) (C) (3));
 - d) Demonstration that its local usage plan compares to the local usage plan offered by the incumbent Local Exchange Carrier ("LEC") (103-690 C (a) (1) (C) (4));
 - e) Affidavit which acknowledges the FCC may require the carrier to provide equal access to long distance carriers (103-690 C (a) (1) (C) (5));
 - f) Affidavit that it does offer or will offer the services that are supported by the universal service support mechanisms by using its own facilities or a combination of its own facilities and resale of another carrier's services (103-690 C (a) (1) (C) (6)); and
 - g) Affidavit certifying that it does or will advertise in a media of general distribution the availability of supported services, including lifeline services and the applicable charges (103-690 C (a) (1) (C) (7)).
- 6) Since the date of the filing of testimony, Nexus has provided information to ORS in support of its application that complies with items (a) through (g) of Paragraph 5 above. Additionally, Nexus filed a replacement Lifeline and Link-Up Advertising and Outreach Plan with the Commission on October 24, 2008.

- 7) Nexus commits to offer Lifeline and Link-Up service in the designated service area to all qualifying low-income customers in accordance with the Commission's Regulation 103.690.
- 8) Nexus commits to file all required reporting including but not limited to company specific quarterly service quality reports.
- 9) Nexus commits to having its tariff electronically available on the Commission's website as well as the company's website.
- 10) Nexus commits that its calling area is the same as the incumbent local exchange carrier's calling area and its service provides unlimited local calling within this calling area.
- 11) Nexus commits to flow through to eligible Lifeline and Link-up customers all low income support received by the company.
- 12) Nexus agrees to comply with any recertification requirements which the Commission may legally impose on eligible telecommunications carrier solely receiving low income support.
- 13) Nexus agrees to file a request with the Commission in the event Nexus intends to seek any federal high cost support in the future.
- 14) The Parties agree to present this Stipulation to the Commission and agree to use reasonable efforts in recommending approval of the application.
- 15) This Stipulation shall be effective upon execution by the Parties and shall be interpreted according to South Carolina law.
- 16) The terms and conditions of this Stipulation fully represent the agreement of the Parties.
- 17) The Parties further agree that by signing this Stipulation, it will not constrain, inhibit, or impair any arguments or positions in future proceedings.
- 18) Each Party acknowledges its consent and agreement to this Stipulation by authorizing its respective counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized execution of this Stipulation. Facsimile or electronic signatures shall be as effective as original


signatures and shall likewise bind any Party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Stipulation.

Representing Nexus Communications, Inc.

A handwritten signature in black ink, appearing to be 'S. Elliott', written over a horizontal line.

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